
LIMITED LIABILITY COMPANY CANCELLATION WITHOUT TAX CLEARANCE

PURPOSE OF BULLETIN	To advise staff of the provisions of Assembly Bill 1859, chaptered September 9, 2004.
BACKGROUND	<p>AB 1859 provides that under specified circumstances domestic limited liability companies (LLC) may cancel registration with the California Secretary of State without obtaining a Tax Clearance Certificate from the Franchise Tax Board. It also contains provisions for exclusion of the LLC annual tax.</p> <p>With the exception of this new law, LLCs are required to obtain a Tax Clearance Certificate from the FTB before the SOS is allowed to file an LLC Certificate of Cancellation. LLCs complete Form 3555L, <i>Request for Tax Clearance Certificate LLC or LLP</i>, according to instructions contained in Publication 1038L, <i>Instructions for Limited Liability Companies or Limited Liability Partnerships Requesting a Tax Clearance Certificate</i>. After receiving Form 3555L, the Tax Clearance Unit requires that an LLC file all required returns and pay all amounts due before issuing a Tax Clearance certificate. After the FTB sends the Tax Clearance Certificate to the SOS, the SOS files an LLC Certificate of Cancellation.</p> <p>Registered LLCs are subject to an LLC annual tax and in some cases an LLC fee and a nonconsenting nonresident member's tax.</p>
REQUIREMENTS TO CANCEL WITHOUT A TAX CLEARANCE CERTIFICATE	<p>The domestic LLC Certificate of Cancellation must include a statement (which includes the name of the domestic LLC and its SOS number) that all of the following items have been completed in order for the SOS to file the Certificate of Cancellation without a Tax Clearance Certificate:</p> <ul style="list-style-type: none">• The Certificate of Cancellation is being filed within 12 months of filing the Articles of Organization.• The LLC has no debts or liabilities, except those described as tax liabilities.• The "tax liability" of the canceling LLC will either be paid or be assumed by another business entity or individual.• A final tax return has been filed with the FTB.• The LLC has not conducted any business since organizing.• All assets of the LLC have been distributed to the entitled persons.

(Continued)

REQUIREMENTS
TO CANCEL
WITHOUT A TAX
CLEARANCE
CERTIFICATE
(Cont.)

- The cancellation is authorized by a majority of the managers or members, or the person or majority of persons that signed the Articles of Organization.
- All payments the LLC has received for interests have been returned to the investors.

These rules apply for LLC Articles of Organization filed by the SOS on or after January 1, 2004.

LLC ANNUAL
TAX EXCLUSION

The LLC annual tax is not required for the first taxable year if the LLC meets all of the above requirements. This is effective for taxable years beginning on or after January 1, 2005.

LLC ANNUAL
TAX REFUND

The FTB cannot refund an LLC annual tax that has been paid and meets the exclusion provisions.

EXAMPLE: 2004
TAXABLE YEAR

The SOS files LLC Articles of Organization on August 1, 2004, for Needs Capital, LLC. Needs Capital LLC, later determines that it is unable to obtain sufficient funding to begin its business operations. On December 14, 2004, it files an LLC Certificate of Cancellation asserting that it meets all of the above requirements. SOS files the LLC Certificate of Cancellation without a Tax Clearance Certificate. Needs Capital, LLC is on a calendar taxable year.

Needs Capital, LLC must file a final 2004 Form 568 and pay an LLC annual tax of \$800. The LLC annual tax exclusion is not available prior to the 2005 taxable year.

EXAMPLE:
2004/2005
TAXABLE
YEARS

Use the same facts as in the 2004 example, except that Needs Capital, LLC files its Certificate of Cancellation on February 1, 2005.

Needs Capital, LLC must file a 2004 Form 568 and pay an LLC annual tax of \$800. The LLC annual tax exclusion is not available prior to the 2005 taxable year. Needs Capital, LLC must also file a final 2005 Form 568 and pay an annual tax of \$800. 2005 is its second taxable year and the LLC annual tax exclusion is only available for the first taxable year.

EXAMPLE: 2005
TAXABLE YEAR

Use the same facts as for the 2004/2005 example, except that Needs Capital, LLC organizes on February 1, 2005, and files its Certificate of Cancellation on November 1, 2005. Also, it made an \$800 payment on April 15, 2005, for the LLC annual tax.

Needs Capital, LLC meets the LLC annual tax exclusion since its first and final taxable year was on or after January 1, 2005. However, since FTB cannot refund LLC annual tax payments, it must self assess the \$800 LLC annual tax on its 2005 Form 568.

If Needs Capital, LLC did not pay the LLC annual tax, it would file a final 2005 Form 568 without self assessing or paying the LLC annual tax.

QUESTIONS/
COMMENTS
